

AMENDED IN SENATE MAY 15, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2355

Introduced by Assembly Member Bill Campbell

February 21, 2002

An act to amend Sections 708.310 and 708.320 of the Code of Civil Procedure, and to amend Section 17302 of the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2355, as amended, Bill Campbell. Limited liability ~~partnership~~ and limited liability companies.

Limited liability companies are regulated pursuant to the Beverly-Killea Limited Liability Company Act. Existing law authorizes a court of competent jurisdiction, upon application by a judgment creditor of a member of a limited liability company, to charge the membership interest of the member with payment of an unsatisfied judgment. *Existing law provides that, to the extent charged, the judgment debtor has only the rights of an assignee of the membership interest.*

This bill would extend these provisions to an application by a judgment creditor against an assignee of the membership interest, and would provide that service of a notice of motion for a charging order on a judgment debtor and on the *other* members or *the* limited liability company creates a lien on the judgment debtor's *assignable membership* interest in the limited liability company. The bill would

provide that the lien continue under the terms of the charging order, if granted, and would authorize the court to order a foreclosure on the membership interest ~~if certain conditions are met at any time, subject to the charging order.~~ The bill would ~~delete the provision that, to the extent charged, a judgment creditor has only the rights of an assignee of the membership interest.~~ The bill would provide that the purchaser at the foreclosure sale has the rights of an assignee. ~~The~~

~~This bill would also provide that, at any time before foreclosure, an~~ a membership interest charged may be redeemed by the judgment debtor, by other members with property other than property of the limited liability company, or by other members with property of the limited liability company with the consent of the members whose membership interests are not so charged.

~~This bill would authorize a court that has issued a charging order to appoint a receiver of the share of the distributions of the limited liability company and make other orders, directions, accounts, and inquiries that the judgment debtor might have made or the circumstances may require. The~~

~~This bill would also make conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 708.310 of the Code of Civil Procedure
- 2 is amended to read:
- 3 708.310. If a money judgment is rendered against a partner or
- 4 member but not against the partnership or limited liability
- 5 company, the judgment debtor's interest in the partnership or
- 6 limited liability company may be applied toward the satisfaction
- 7 of the judgment by an order charging the judgment debtor's
- 8 interest pursuant to Section 15673, 16504, or 17302 of the
- 9 Corporations Code.
- 10 SEC. 2. Section 708.320 of the Code of Civil Procedure is
- 11 amended to read:
- 12 708.320. (a) ~~Service~~ A lien on a judgment debtor's interest
- 13 in a partnership or limited liability company is created by service
- 14 of a notice of motion for a charging order on the judgment debtor
- 15 and on ~~the~~ either of the following:
- 16 (1) The other partners or the partnership ~~or on the~~.

(2) ~~The other members or the limited liability company creates a lien on the judgment debtor's interest in the partnership or limited liability company.~~ *liability company.*

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished.

SEC. 3. Section 17302 of the Corporations Code is amended to read:

~~17302. (a) On application to a court of competent jurisdiction by any judgment creditor of a member or of an assignee of the membership interest, the court may charge the interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest.~~

17302. (a) On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the assignable membership interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect to the limited liability company and may make all other orders, directions, accounts, and inquiries that the judgment debtor might have made or that the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's *assignable membership* interest. The court may order a foreclosure on the *membership* interest subject to the charging order *at any time*.

~~(e)~~ The purchaser at the foreclosure sale has the rights of an assignee.

~~(d)~~

(c) At any time before foreclosure, ~~an~~ *a membership* interest charged may be redeemed in any of the following manners:

(1) By the judgment debtor.

(2) With property other than ~~membership~~ property of the limited liability company by one or more of the other members.

(3) With property of the limited liability company by one or more of the other members with the consent of all of the members whose *membership* interests are not so charged.

~~(e)~~

1 (d) This section does not deprive any member or assignee of a
2 membership interest of the benefit of any exemption laws
3 applicable to the membership interest *in the limited liability*
4 *company*.

5 ~~(f)~~

6 (e) This section provides the exclusive remedy by which a
7 judgment creditor of a member or of a member's assignee may
8 satisfy a judgment out of the judgment debtor's membership
9 interest in the limited liability company.

